

Comments of the
EDISON ELECTRIC INSTITUTE

on

**the U.S. Environmental Protection Agency's
Enforcement and Compliance History Online (ECHO)
Proposed Database**

Docket No. ~~FRL-7410-5XX~~
67 Fed. Reg. 70079 (Nov. 20, 2002)

Submitted to the U.S. Environmental Protection Agency

March 31, 2003



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Rebecca E. Kane
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building (MC: 2222A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Comments of the Edison Electric Institute Regarding EPA's Enforcement and
Compliance History Online (ECHO) Database - Docket No. FRL-7410-5

Dear Ms. Kane:

1. EEI's Interest in the ECHO Initiative

The Edison Electric Institute (EEI) is the association of the nation's shareholder-owned electric utility companies and industry affiliates and associates worldwide, including companies that generate, transmit and distribute electricity and provide an array of energy and other services to their customers. Furthermore, EEI's Alliance of Energy Suppliers division represents integrated, affiliate, and independent power producers, generators and power marketers in the United States' wholesale electricity markets. Together our U.S. members serve more than 90 percent of the customers of the shareholder-owned segment of the industry and nearly 70 percent of all consumers of electricity in the United States, generating and delivering almost 70 percent of the country's electricity.

In generating the electricity needed to serve customers and their communities throughout the country, our members own land and operate facilities subject to permitting requirements and regulated under numerous Federal laws including the Clean Air Act (CAA), the Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA). These facilities and operations are also subject to numerous other regulations and requirements issued by State, local, and interstate authorities. Therefore, EEI's members will be substantially and directly affected by any decisions made by the U.S. Environmental Protection Agency (EPA) affecting the current implementation or future changes to the Enforcement and Compliance History Online (ECHO) initiative.

2. Issues Raised by EPA in its Notice Inviting Comments

On November 20, 2002, EPA made available to the public the ECHO web site containing information regarding State and Federal permits, inspections, violations, enforcement actions and penalties for facilities regulated under the statutes and regulations mentioned above. The pilot web site contains information for over 800,000 facilities including electric utilities. According to EPA, the site was created to continue EPA's commitment to provide the public and industry access to environmental information.

In its *Federal Register* announcement of the ECHO web site, EPA states that is committed to public access to environmental information and worked diligently to provide a platform to allow Internet access to facility-level compliance and enforcement information contained in core EPA data systems. EPA is seeking comments on the usability of the site as well as the accuracy of its data. Specifically, EPA has asked responses to the following questions:

- Does the site provide meaningful and useful information about the compliance and enforcement program?
- Is the site easy to navigate?
- Does the help text adequately explain the data?
- What additional features, content, and/or modifications would improve the site?

Additionally, EPA has asked the members of the regulated community:

- Were the facility reports accurate?
- If you did need to submit an online error report, was the error reporting easy to use?

In the following comments we address each of these questions and also offer policy recommendations to advance effective reporting of compliance and enforcement history.

3. EEI's Concerns About the ECHO Database

EEI is pleased to submit these comments on the ECHO initiative. EEI supports EPA's efforts to disseminate accurate facility compliance information. While EEI's members agree in concept that public access to such information is appropriate, however, there are serious shortcomings to the pilot web site that must be corrected if the public is to have accurate and meaningful information about the compliance history of the facilities contained in the database.

Specifically, EEI does not believe that the ECHO database currently provides meaningful and useful information concerning compliance and enforcement. Information contained in the database is inaccurate and misleading. It does not accurately represent a facility's compliance status. There are at least two reasons for this. First, factual errors exist in the

database that need to be corrected. We discuss this in more detail later in these comments. Second, the database indicates “non-compliance” as the time from which a formal complaint is issued until the time the complaint is resolved. However, actual non-compliance may be corrected before the formal complaint is issued or some time prior to when the non-compliance is officially “resolved.” At the present time, there does not appear to be any way to reflect the “actual” compliance record of the facility. In a sense, the database better reflects the timeliness of complaint resolution rather than the actual amount of time that a facility is out of compliance.

A. Data Inaccuracies

EEI understands and agrees that communities, businesses, State, local, tribal governments, and other stakeholders should have access to information sufficient to allow them to effectively participate in managing human health and environmental risks. It is critical, however, that the data available are accurate, complete and meaningful.

In this regard, EPA asked two specific questions:

- Are the facility reports contained in ECHO accurate?
- Is the error reporting process easy to use?

In the “fact sheet” that EPA has posted on its internet site describing the ECHO program, EPA notes that ECHO can be used by State and local governments to determine their own compliance program priorities and by citizens to make informed decisions regarding environmental issues affecting their communities. If ECHO is thus to be used as a decisionmaking tool for the expenditure of State and community resources, it is critical that the information in the ECHO database must be accurate and complete.

However, as feedback EEI has received from our members illustrates and as EPA itself has recognized, the ECHO database contains a variety of significant errors and is far from complete. Errors and omissions range from simple apparent input mistakes to more significant mistakes about facility ownership and operation and lack of sufficient information about the complexity of the environmental issues being addressed and extensive efforts regulators and companies are making to address compliance issues. The following is a list of just some of the many problems with the database noted by EEI members:

- For several facilities, the address given on the permits and consequently in the ECHO database is the same -- a centralized location. Therefore, the demographic information contained in the ECHO database is based on a location different from the actual facility.
- NPDES permits are not shown as renewed where appropriate.
- The coordinates identifying the location of a facility are missing critical digits.
- The addresses of many facilities and corporate headquarters are out of date, and zip codes incorrectly reported.

- The database indicated that a particular facility was currently a high priority violator and had been one for several years. In actuality, the violation was corrected several years back.
- In some instances, the ECHO database did not reflect the sale of facilities to a different corporate entity that occurred a significant time in the past.
- Alleged violations of new source review requirements were listed not just when a notice of violation was issued but for every quarter since then.
- Facilities noted that the database reported them as “out of compliance” after the issuance of a notice of violation. However, in most instances the matter had been resolved.
- Different permits for the same facility had different names for the facility.
- The database indicated a numeric exceedance with no explanation. In actuality, the standard involved is flexible and based on biological activity, so the exceedance is not a noncompliance event.

Some additional issues associated with accuracy include:

- Admission from at least one State agency that the lag time to get information from DEP to EPA is significant, running about 1 year behind on some submittals.
- The ECHO site appears to only show the EPA-required inspections, not all inspections that occur. This could lead to a misrepresentation of the extent of scrutiny that actually occurs.
- The EPA subcontractor administering the site could only provide information about explicit information on the sites. They were not able to answer specific questions regarding what the data represented, nor did they refer the inquiry to another party capable of answering the question.
- In another instance, the State regulatory agency was contacted to confirm information regarding an NPDES permit violation reported in ECHO. The regulator had difficulty understanding the ECHO database for this permit.
- The Data Dictionary indicates a permit limit exceedance can be representative of a group of data. In other words, ECHO may show a violation where no violation has been reported.
- The geographic information indicates adjacency to a Section 303(d) water (“impaired water”). The implication is that the violator has something to do with the water being listed, but there is no factual information to confirm this.
- In more than one instance, the status of a supposed “violation” is classified differently by the State and the Federal Agency. This indicates there is some subjectivity or interpretation of the data and possible inconsistencies in determinations regarding a facility’s compliance.

As EPA notes in its *Federal Register* notice, EPA relies on State and local agencies for much of the data contained in the ECHO database. Yet State and local agencies face serious resource constraints, especially in the current State and local budgetary crunch. As a result, the agencies may not be able to devote the resources necessary to ensure that

the data are sufficiently accurate and complete. Therefore, it is very important that EPA provide each company an opportunity to review its data before the data are posted on ECHO, while also recognizing that companies too face serious staffing and resource constraints and the quantity of data involved needs to be kept to a reasonable minimum.

C. Purpose and Utility of Information Presented in the Database

ECHO in its current form does not provide meaningful and useful environmental compliance information to the public. This is because the database takes a fairly simplistic approach to a very complex subject. It does not provide sufficient “context” for the user about the details of compliance as a matter of law. Further, the database does not provide a means for the user to determine the “significance” of a reported noncompliance. This is a critical distinction. The regulations and plethora of guidance documents that implement the statutes covered by ECHO are complex and often cumbersome. Without providing a meaningful understanding of the risk posed by the data presented, most stakeholders simply cannot make intelligent decisions about what the data mean. There is little if any practical value in the database if it does not provide this context.

We are aware of a few instances where the media ran stories about supposed “non-compliant” facilities, when in fact the information taken from the database as the basis for the story was incorrect. The general public too can be misled by the way in which ECHO reports non-compliance. For example, the database contains numerous examples where a facility is noted to be out of compliance; however, that facility may be addressing the issue under a consent order or other administrative means. The facility is acting appropriately and compliant with the law, yet ECHO still lists the facility as out of compliance until the item is completely resolved. To the public who does not have a good understanding of the history or the specifics of any given issue, it appears the facility is continually out of compliance, when it may not be and the situation is being rectified.

The easy availability of this inaccurate or misleading data to the public and the deficient error reporting process may impose significant and unwarranted harm to shareholder confidence and subsequently the economic viability of EEI member companies. As EPA itself has recognized, the financial investment community pays close attention to a company’s “corporate governance and management attitudes toward the environment in making investment decisions.”¹ In public statements, the Agency indicated that it intends to list publicly on a web site those companies facing certain EPA actions. One purpose of publishing such a list is “to allow investors to examine the compliance record of such companies and to assess future environmental costs that might materially affect their economic performance.”² If this is true, it is incumbent on the agency to assure that the

¹ EPA 300-N-01-008, “Enforcement Alert,” U.S. EPA Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement (October 2001).

² BNA Daily Environment Report, “New Initiatives to Encourage Disclosure of Environmental Costs and Liabilities,” Jan. 23, 2003.

information presented in a public database is of the highest quality, accurate, complete, clear and meaningful to all users.

Many EEI member environmental professionals reported that they found reviewing the site-specific data difficult, or even impossible in several instances. The database codes were difficult to interpret and the unexplained acronyms frustrating. We must draw the conclusion that if seasoned professionals had difficulty understanding the data, it is reasonable to assume the data would most often be “misread” by the general public who do not have such experience with the environmental reporting requirements.

Another point of confusion is understanding the criteria used by EPA to determine if a facility is in “significant non-compliance” or a “high priority violator.” The database must present this information clearly in easy-to-understand and succinct terms. Furthermore, EPA needs to recognize the complexities of environmental regulation, permitting, and compliance, and not try to assign simple categorical “yes” or “no” labels.

In light of the public nature of the database and the possible ramifications if false or misleading information is included, it is important that there be an effective error correction process. However, there is a concern that EPA has inappropriately shifted the administrative burden of maintaining and assuring the accuracy of the Federal database to the regulated community. This change has occurred without any compensation or concern for the impact on business operations, reputation and personnel. More disturbing is the fact that any shift in burden has occurred after making the database readily available to the general public.

D. Security Concerns

Post September 11, 2001, the Federal government has taken steps to protect industrial, commercial, transportation, energy, and other facilities in the U.S. for obvious security reasons. Congress has established the Homeland Security Department to identify measures that can be taken to protect against future terrorist acts, including measures to protect critical infrastructure such as electric utility facilities. Furthermore, various Federal agencies including the Department of Energy (DOE), Nuclear Regulatory Commission (NRC), and Federal Energy Regulatory Commission (FERC) have taken steps to protect sensitive data about such facilities. For example, shortly after the September 11 terrorist attacks, FERC proposed to limit public access to “critical energy infrastructure information” (CEII) that was previously public. FERC moved very swiftly by announcing a CEII policy statement, and has since refined that statement in the form of a final rule that FERC has just issued on February 21, 2003. EPA headquarters also has acted on its obligation to consider national and local security issues regarding access to sensitive information by identifying potentially sensitive information, particularly

resources which provide information on chemicals, and/or location, and/or amounts, and/or impacts on the environment or human health.

In the ECHO context, however, EEI is concerned that the instant and easy access to demographic and geographic data included in the pilot web site may be inconsistent with our nation's efforts to preserve homeland security. An Internet user can use ECHO to access information concerning significant infrastructure needs such as transportation, manufacturing, and energy. That same user can plot each of these facilities on a map and obtain extensive demographic information for the community surrounding that facility.

Specifically, ECHO provides information about the longitude and latitude of the facility, the density of the population surrounding the facility, locations of churches and schools and other important community meeting places, local highway intersections, hazardous waste on site, description of the generation including the location of boilers and turbines, and ethnic profiles of the surrounding area. Access to such extensive and sensitive information is inconsistent with, and could interfere significantly with, our Federal government's efforts to protect homeland security. To underscore this point, the Nuclear Regulatory Commission notified an EEI member that it might wish to remove information about the location of its nuclear facilities from its web site. This recommendation is in stark contrast with the ECHO database, which makes this information easily accessible. EPA should at least be consistent with other Federal agencies on what information is deemed sensitive for purposes of protecting homeland security.

4. Improvements and Policy Suggestions

EEI looks forward to working with EPA to improve compliance and enforcement policies administered by the agency. We believe certain fundamental changes need to be made to the ECHO web site if it is to reach its stated goal of providing a tool that offers a snapshot of the environmental record of a given facility,³ especially if that snapshot is to present an accurate picture. Particularly, it is important the agency acknowledge clearly on the web site that at best the data provide only a "snapshot" of the environmental record of a facility and in the database EPA does not purport to characterize or assess the overall regulatory status of that facility. In addition, the information contained in ECHO should not be used to gauge risks to human health or the environment.

In its ECHO *Federal Register* notice, EPA states that it is committed to public access to environmental information. EPA also acknowledges that the data contained in ECHO

³ 67 Fed. Reg. 70080 column 3.

have been previously available to the public and provide only facility-level compliance and enforcement information. In light of the fact that EPA is now providing information in such a readily accessible format and available to all with access to the Internet, it is more important than ever that the information presented is accurate and complete. Moreover, since the general public may not be aware of the details associated with compliance and enforcement activities of the agency, it is particularly important that the agency take extra precautions to caveat the meaning of the information available in the database, cautioning the user about its use or misuse. Particularly, the web site must include only accurate information concerning facility regulatory requirements.

A. Data Problems

In the “Known Data Problems” section of the web site, EPA acknowledges that existing data inaccuracies have been intentionally incorporated into the ECHO web site. EEI agrees with the comments of its utility partners, the Utility Water Act Group and the Utility Air Regulatory Group, that by incorporating known inaccuracies into ECHO, EPA places an inappropriate burden on the regulated industry to seek out such inaccuracies and report them to EPA. When it enacted the Paperwork Reduction Act (PRA),⁴ Congress made clear that it meant to make Federal agencies more responsible and publicly accountable for reducing the burden of Federal reporting requirements on the public including the regulated community. Indeed, the PRA specifically requires Federal agencies to minimize the burden associated with collecting and maintaining information from the public and to ensure the integrity of the information collected and published.⁵ ECHO should be reorganized so that the burden of correcting known data problems does not rest with the regulated community.

There appears to be a process problem in the way NPDES compliance data are entered into the PCS by the States and interpreted by the Federal database. Even if all the errors contained on the ECHO web site during this initial review and comment period could be located and corrected, unless this problem is corrected, the inaccuracies within the ECHO web site will be self-perpetuating.

The error correction process should be improved so as to prevent anyone without knowledge of the facility from making corrections to specific data represented in the database. Currently, anyone has the authority to request correction and/or revision of the data. Additionally, it may be appropriate for EPA to send facilities a summary of the information presented on the site for each of their facilities prior to posting the information to the public. This would help to ensure that only accurate information is included in the database. This is not unlike the approach used in maintaining the Toxic Release Inventory (TRI) data. The TRI center sends “Facility Data Profiles” to the individual facilities for any corrections prior to posting the data. A similar system should be used for ECHO prior to posting any data.

⁴ 44 U.S.C. Chapter 35.

⁵ See, e.g., 44 U.S.C. §§ 3504(c) and 3506(b, c). Also see Office of Management and Budget “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies,” 67 Fed. Reg. 8451 (Feb. 22, 2002).

B. Data Disclaimers

ECHO should have prominent disclaimers on the web site making it clear to users that the information is not always accurate. At the very least, information which has not been verified should contain a disclaimer about its accuracy. Also data that have been challenged as part of an error correction should be tagged appropriately to indicate its status, and confirmed errors should be corrected expeditiously. EPA should set a time limit by which it will respond to requests for correction of data. EEI suggests 30 days as an appropriate timeframe to correct errors. If those errors cannot be resolved in this timeframe, the data should be temporarily deleted from the database until such time as the errors have been satisfactorily addressed.

C. Demographic data

The idea of having the population statistic tied to a facility's latitude and longitude has no relevance to compliance data. There are not enough "data" to assess accurately potential risks to nearby populations. On the other hand, including such information in the database may inappropriately help terrorists target facilities.

D. Internet Links

In order to maintain the consistency and accuracy of data presented by ECHO, it is EEI's strong recommendation that links to external information sources be either more carefully scrutinized or deleted. EPA cannot control the content of this information and it is therefore inappropriate for inclusion on the ECHO web site.

E. Additional Fields to Consider

ECHO would be improved by providing a comment section so that regulated entities can add specific information with regard to complex compliance issues. This would help the public better understand the issues associated with any particular reported violation.

F. Data Dictionary

The Data Dictionary is lengthy and most individuals may not want to take the time to interpret the codes. The site should be more user friendly and rely less on legal terms and better communicate the nature of any reported violation.

G. Enforcement Programmatic Changes

EPA has taken steps forward in trying to present useful and meaningful information to the public about compliance at regulated facilities. Enforcement specifics are probably second only to compliance activities in terms of complexity. Because of the lack of clarity and sometimes conflicting approaches various regulatory regimes take with regard to enforcement specifics, EPA should seriously consider making a concerted effort to

review and streamline the array of arcane and often conflicting enforcement directives, interpretive guidance, and clarifying memos that currently govern the Office of Enforcement and Compliance Assurance's (OECA) programs. The public would be well served by making the enforcement and compliance assurance programs more straightforward and consistent across various media. EEI looks forward to working with OECA to undertake this large but important task.

EEI appreciates this opportunity to provide its thoughts on ECHO and EPA compliance and enforcement activities. If there are any questions about our comments or issues we have raised, please contact Rich Bozek (Rbozek@eei.org, 202-508-5641) or Henri Bartholomot (Hbartholomot@eei.org, 202-508-5622).

Sincerely,



C. Richard Bozek
Director, Environmental Policy

cc: Quin Shea, EEI